SUPREME COURT OF THE UNITED STATES.

No. ~~202~~. 122

THE STEAMSHIP DOURO AND CARGO, O. T. FALLENSTEIN, CLAIMANT OF THE VESSEL, AND CHAPPLE, DUTTON & CO., CLAIMANTS OF THE CARGO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 202.

THE STEAMSHIP DOURO AND CARGO, O. T. FALLENSTEIN, CLAIMANT OF THE VESSEL, AND CHAPPLE, DUTTON & CO., CLAIMANTS OF THE CARGO, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificate	1	1
Libel	2	1
Charles Edwards' deposition	11	5
Kenneth Child McKenzie's deposition	17	6
John T. Bloore's deposition	28	11
George A. Esser's deposition	37	14
Theodore De Luce's deposition	49	17
Certificate of British registry	54	19
Final decree	71	26
Citation	73	26
Bond	75	27
Appeal	77	28

1 THE UNITED STATES OF AMERICA,
Southern district of New York, ss:

THE UNITED STATES AND CAPTORS, libellants' appellees,
vs.
THE STEAMER DOURO, HER TACKLE, &C., AND CARGO, O. T. Fallenstein clm't of vessel, Chapple, Dutton & Co. clm't of cargo, appellants.
} In prize. 17, 475.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this sixteenth day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-eighth.

[SEAL.] GEO. F. BETTS, *Clerk.*

CHARLES EDWARDS,
Proctor and advocate for claim'ts of vessel and cargo, appellants.

2 United States district court, southern district of New York.

THE UNITED STATES OF AMERICA
against
THE STEAMER DOURO, TACKLE, &C., AND CARGO.
} In prize.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of information in prize filed herein by E. Delafield Smith, attorney of the United States for the southern district of New York, on behalf of said libellants and of the naval captors in interest, respectfully represents to this honorable court:

First. That the steamer or vessel called the Douro, with the goods, wares, and merchandise laden therein, was captured as lawful prize on or about the first day of March, 1863, on the Atlantic Ocean, off Cape Fear, North Carolina, by the United States gunboat Quaker City, James W. Fraley, United States navy, commanding.

Second. That the steamer or vessel called the Douro, with the goods, wares, and merchandise laden therein, were at the time of such capture and are now rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said steamer or vessel called the Douro, with the goods, wares, and merchandise laden therein, have been brought to the port of New York, and are now at said port, and within the jurisdiction of this honorable court.

Fourth. That by reason of the premises, the said steamer or vessel called the Douro, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, became and are liable to condemnation and forfeiture as lawful prize, and should be condemned and forfeited as lawful prize to the libellants.

That all and singular the premises are and were true, and within the jurisdiction of this honorable court; in attestation whereof, the said attorney exhibits the said vessel's papers, and the documents, &c., found on board, together with the testimony of the witnesses, duly taken in preparatorio by

the prize commissioners appointed by this honorable court, which are or will be duly filed in the registry of this court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said steamer or vessel called the Douro, and her tackle, apparel, and furniture, and the goods, wares and merchandise laden therein, in this behalf to be made, and that all persons interested in the said vessel and her cargo may be cited to answer in the premises ; and that all due proceedings being had therein, this honorable court may be pleased to decree for the condemnation and forfeiture aforesaid, and that the said steamer, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, may be condemned as lawful prize to the use of the said United States.

Dated New York, March 13, 1863.

E. DELAFIELD SMITH,
United States District Attorney.

3 Filed March 13, 1863. Monition returnable 31 March, 1863.

4 U. S. district court.

THE UNITED STATES
vs.
THE STEAMER DOURO AND HER CARGO.

To the Hon. Sam'l R. Betts, judge, &c., &c.:

The undersigned, one of the U. S. prize commissioners for this district, respectfully reports : That on receiving this day from the U. S. district attorney, the annexed affidavit of Foster Willis, the prize master of the bark Springbok, he went on board the said prize at the Atlantic Dock, Brooklyn; that he found the facts set forth in the said affidavit substantially true ; he was informed that the vessel had this morning been pumped dry ; that the men engaged therein were absent at dinner, and the work for the time suspended. On going down into her engine-room and measuring the depth of water then in her hold, he found nearly 3 feet of water—certainly over two feet and six inches in depth, and he has no doubt the protection of vessel and cargo require the immediate discharge of the cargo. All of which is respectfully submitted.

HENRY H. ELLIOTT, *U. S. Prize Com'r.*

New York, March 20, 1863.

5 U. S. district court.

THE UNITED STATES
vs.
THE STEAMER DUORO, HER TACKLE, &C., AND CARGO.

SOUTHERN DISTRICT OF NEW YORK, *ss :*

Foster Willis, prize master of the barque Springbok, being duly sworn, says that he is an acting master in the U. S. navy, attached to the U. S. steamer Sonoma; that on the 19th day of March instant, at the request of the U. S. district attorney for this district, deponent on board of the prize steamer Duoro, now lying at the Atlantic Dock, Brooklyn, and examined her and found that she was leaking, and the men working at her pumps. Deponent then went down into the fire-room and discovered two feet of water in the vessel, and was informed by the men that the leak was in the coupling of the shaft which kept them pumping all the time, night and day,

and in deponent's opinion the cargo of the Duoro should be immediately discharged.

FOSTER WILLIS.

Sworn to before me, March 20, 1863.

[SEAL.] N. N. RICE, *Notary Public, N. Y. City.*

6 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 20th day of March, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER DUORO AND CARGO.

On reading and filing the report of Henry H. Elliott, esq., U. S. prize commissioner, and the affidavit of Foster Willis hereto annexed as to the condition of the above-named vessel and cargo; and on motion of E. Delafield Smith, U. S. district attorney, it is ordered that the cargo of the above-named steamer Duoro be unladen by the marshal, under the superintendence of the prize commissioners, and that the same be stored in some suitable warehouse to be selected for that purpose, there to abide the decree or further order of this court.

That at the time of said discharge the said prize commissioners take a full and accurate inventory of the said cargo, specifying each package thereof, and file the same with the clerk of the court, with all convenient speed.

SAM'L R. BETTS.

7 Filed the twentieth day of March, 1863.

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

[SEAL.] Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-three, by E. Delafield Smith, esquire, U. S. district attorney, on behalf of the United States of America, against the steamer "Douro," her tackle, &c., and cargo, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer, her tackle, &c., and cargo, may be cited, in general and special, to answer the premises, and all proceedings being had, that the said steamer, her tackle, &c., and cargo, may, for the causes in the said libel mentioned, be condemned as lawful prize to the use of the United States:

You are therefore hereby commanded to attach the said steamer, her tackle, &c., and cargo, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 31st day of March, inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and

there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

GEO. F. BETTS, *Clerk.*

E. DELAFIELD SMITH, *U. S. District Attorney.*

9 Filed the 31st day of March, 1863.

In obedience to the within monition I attached the steamer Douro and cargo therein described, on the 13th day of March, 1863, and have given due notice to all persons claiming the same that this court will on the 31st day of March inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ROB'T MURRAY, *U. S. Marshal.*

Dated March 31st, 1863.

10 United States district court for the southern district of New York.

THE STEAMSHIP "DUORO," HER TACKLE, &C., AND CARGO, *ads.* THE UNITED STATES OF AMERICA.

To the Honorable Samuel R. Betts, district judge of the United States for the southern district of New York:

The claim of O. T. Fallenstein, of Liverpool, England, to the libel of the United States in the above suit.

First. That this claimant is a British subject, residing at Liverpool aforesaid, and has never thrown off his allegiance to the queen of Great Britain.

Second. That he is sole owner of the above steamship "Duoro," her tackle, engines, appliances, apparel, and furniture, and was so at the time she was taken by the United States vessel-of-war "Quaker City."

Third. He denies, from all he knows, has been informed, and believes, that the said "Duoro" has become by such seizure (by the "Quaker City") or otherwise, prize of war. And he says that she was at least eighty miles from any port of the United States when so seized; that there was no efficient blockade when she came out of Wilmington, nor was she, when she so came out, hailed, stopped, interfered with, or pursued by any blockading vessels;

11 and it is notorious that there is no such efficient blockade, and many neutral vessels go in and come out of the said port of Wilmington without being stopped or taken as prize. And this claimant prays leave to produce proof thereof in case the "Duoro" shall be claimed to be subject to forfeiture on any ground of coming out of Wilmington. Also this claimant says that the said United States vessel Quaker City was not a blockading vessel.

Wherefore this claimant demands restoration of the said steamship Duoro, her tackle, apparel, engines, appliances, and furniture, with costs, damages, and expenses.

O. T. FALLENSTEIN,
By his attorney, CHARLES EDWARDS.

CHARLES EDWARDS, *Proctor and Advocate.*

United States district court for the southern district of New York.

THE STEAMSHIP "DUORO," HER TACKLE, APPAREL, &C., and her cargo, *ads.* THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Charles Edwards, being sworn, maketh oath and saith that he has received a written authority from the above claimant to put in and interpose the above claim. Also that the above claimant is out of the jurisdiction of the above court, and is resident of England. Also that the above claim is true to the best of his knowiedge, information, and belief, and
12 that the said steamship "Duoro," her tackle, apparel, engines, appliances, and furniture, did, and does, and will, if restored, be the property of the said above claimant.

CHARLES EDWARDS.

Sworn at the city of New York, this twenty-eighth day of April, 1863, before me, as witness thus my hand and seal of office.
[SEAL.]
A. OLDRIN SALTER,
Notary Public, New York City, U. S. of A.

Endorsed: 17, 475. In prize. U. S. district court. The steamship Duoro, &c., and cargo, *ads.* the United States, &c. Claim of O. T. Fallenstein, claimant of vessel. Charles Edwards, proctor, &c.
Filed 28th April, 1863.

13 United States district court for the southern district of New York.

THE STEAMSHIP DUORO, HER TACKLE, &C., AND CARGO, *ads.* THE UNITED STATES OF AMERICA.

To the Honorable Samuel R. Betts, district judge of the United States for the southern district of New York:

The claim of Mess. Chapple, Dutton & Company, of Liverpool, England, merchants, and of the partners composing the said firm, to the libel of the United States in the above suit.

First. That none of the said firm are, or ever were, citizens of the United States of America, and are residing in Great Britain.

Second. That they are owners of the cargo of the said steamship Duoro embraced in this suit.

Third. They deny that the said cargo has become prize of war by the United States steamer Quaker City seizing it; that it was seized more than eighty miles from any land; that the same was allowed to pass out of port without being stopped or interfered with by any United States vessel-of-war. Also they say that the said Quaker City was a mere transient vessel, not even a blockading ship, and not having a right, under the law of nations, to seize a neutral vessel and cargo on the high seas, when such vessel and cargo had departed from the United States, and was (as aforesaid)
14 in open ocean, and upwards of eighty miles from any port of the United States when taken by the said steamer "Quaker City."

Wherefore these claimants pray that the said cargo be restored, with costs, damages, and expenses.

CHAPPLE, DUTTON & CO.,
By CHARLES EDWARDS, *their attorney.*

CHARLES EDWARDS, *Proctor and Advocate.*

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Charles Edwards, being sworn, maketh oath and saith that he has received a written authority from the above claimants to put in and interpose the above claim. Also that the above claimants are out of the jurisdiction of the above court, and are residents of England. Also that the above claim is true to the best of his knowledge, information, and belief, and that the said cargo did, and does, and will, if restored, be the property of the said above claimants.

CHARLES EDWARDS.

Sworn at the city of New York this twenty-eighth day of April, 1863, before me, as witness thus my hand and seal of office.
[SEAL.]
A. OLDRIN SALTER,
Notary Public, New York City.

Endorsed: In prize. U. S. district court, southern dist. of N. Y. 17, 475. The steamship Duoro, &c., and her cargo, *ads.* the United States. Claim of Messrs. Chapple, Dutton & Co. to cargo. Charles Edwards, proctor and advocate.
Filed 28th April, 1863.

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 12th day of May, in the year of our Lord one thousand eight hundred and sixty-three.
Present: The Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER DUORO, HER TACKLE, &C., AND CARGO. } 17, 475.

The U. S. district attorney moves the hearing of the cause, reads pleadings, &c.; also moves for condemnation of vessel and cargo as lawful prize.
Mr. Edwards appears for claimants. Papers submitted. *Cur. ad. vult.*
The briefs in this cause to be handed to the court within ten days from this date.

17 District court of the United States for the southern district of New York.

Deposition of Kenneth Child McKenzie, master, a witness produced, sworn, and examined in preparatorio on the sixteenth day of March, in the year eighteen hundred and sixty-three, at the office of E. H. Owen, U. S. prize commissioner, at No. 72 Wall st., N. Y. City, on the standing interrogatories established by the district court of the United States for the southern district of New York, the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq., U. S. district attorney, in behalf of the captors of a certain ship or vessel called the Duoro and her cargo.

1. To the 1st interrogatory he says: I was born in Staffordshire, England. I now live with my wife at Liscard, Cheshire, and that place has been my home for the last eight years. I am a seafaring man. I am a British subject and owe allegiance to that government.
2. To the 2d interrogatory he says: I was present at the capture of the vessel and cargo.
3. To the 3d interrogatory he says: The capture was made at about half

past eleven in the morning, on the 9th of March, 1863, about twenty-five miles to the eastward of Frying Pan Shoals, on the coast of North
18 Carolina. The vessel taken had no commission to make prizes. She was captured because she had been running the blockade. The vessel and cargo were brought into this port.

4. To the 4th interrogatory he says: The vessel captured sailed under the British flag; there were no other colors on board.

5. To the 5th interrogatory he says: No resistance was made to the capture. The capturing vessel fired a broadside or half a broadside at us, amounting to some fifty-four guns. This was done because we were trying to escape. We fired none in return. The U. S. gunboat "Quaker City," carrying, I think, nine guns, made the seizure. One other vessel, the Hatteras, and a schooner, name unknown, were in sight during the chase, but not at the time of the capture of the vessel. The vessel captured was a merchantman, an iron screw steamer. I do not know positively to whom she belonged, but I think she was owned by Mr. Fallanstine, of the firm of Chapell & Dutton, of Liverpool.

6. To the 6th interrogatory he says: I suppose the "Quaker City" had a commission to act in our capture, as she was a U. S. armed vessel. The "Duoro" has not been condemned, to my knowledge.

7. To the 7th interrogatory he says: The name of the vessel captured was the Duoro. I was her master and commander. Mr. Fallanstine, already mentioned, appointed me to the command in Liverpool. I have
19 known the vessel for about eight years, and I took possession of her at Liverpool on the 17th of November, 1862. I have answered the remainder of this interrogatory.

8. To the 8th interrogatory he says: The Douro is of one hundred and eighty-five tons burthen, English measurement. Her company were all on board at the time of capture, and consisted of nineteen men, officers and crew all told. Three men deserted the vessel before she left Wilmington. To the best of my knowledge they were all British subjects. Ten of them came on board at Liverpool about the first of December last, and the remainder came on board at Nassau, about the middle of February, 1863. I hired them all.

9. To the 9th interrogatory he says: I was the master and commander of the "Douro" at the time of capture. No one of the vessel's company had any part, share, or interest in the same or in her lading. I had a small adventure on board, consisting of some tobacco. I do not know the value thereof.

10. To the 10th interrogatory he says: I first saw the Douro at Liverpool about six or eight years ago. She carried no guns, but a small brass piece to be used in case of distress. I do not know what country build she is. She has always been called the "Douro," to the best of my knowlege, information, and belief.

11. To the 11th interrogatory he says: The voyage wherein the
20 "Douro" was taken began at Liverpool on the second of December, 1862, and was to have ended at any port or ports in the North Atlantic. From Liverpool she sailed for Nassau, touching at Maderia on the way, to coal. At Nassau she took in a cargo, consisting of about three hundred bags of salt, about seventy barrels of salts, four casks of chamomile flowers, about fifty cases of brandy, a quantity of boots and shoes, I do not know how many; some cases of quinine, I do not know how many; about fifty or sixty boxes of candles, and about thirty or forty boxes of soap, about forty barrels of cream of tartar and the same quantity of soda, some potash and a number of chests of tea, and this is all can remember. From Nassau she sailed with this cargo for Wilmington, N. C.; entered that port about the

21st of February, discharged her cargo, and took in a return cargo, consisting of four hundred and twenty-two bales of cotton. From Wilmington she was going back to Nassau. This cotton was placed on board in the latter part of February, 1863. There were no goods contraband of war or prohibited by law on board, to my knowledge.

12. To the 12th interrogatory he says: There was no passport on board the vessel, but the custom-house clearance and a passport from the Confederate General Whiting to pass the forts. There was no sea-brief on board that I know of. I do not know where her last voyage was made pre-
21 vious to the one on which she was captured. She used to run to Lisbon and Oporto, and Liverpool, carrying cattle. Wilmington was her last clearing port before capture.

13. To the 13th interrogatory he says: I have already answered this interrogatory as fully as I am able.

14. To the 14th interrogatory he says: I think that Mr. Fallanstine, already mentioned, was the owner of the vessel, because he hired me. This is my only reason. He acted generally as owner. He lives in Liverpool. I think he is married. I think he is a Spaniard by birth. I have no knowledge or belief in regard to the ownership of the goods. Harris & Howell were the agents for the goods in Wilmington.

15. To the 15th interrogatory he says: I have no knowledge, information, or belief in regard to the matters herein inquired of.

16. To the 16th interrogatory he says: Saunders & Son were the consignees of the vessel at Nassau; they attended to the lading of the cargo at that place. Harris & Howell were the consignees of the same in Wilmington; they attended to the discharge of the cargo at Wilmington which was brought in from Nassau, and they attended to the loading of the cotton aboard at that place. I do not know what interest any of these men had in the goods. The vessel and her cargo were consigned back again from Wilmington to Saunders & Son, of Nassau. I have already answered as fully as I am able in regard to the several quantities, qualities, and particu-
22 lars of the goods on board the vessel.

17. To the 17th interrogatory he says: I think two bills of lading were signed for the cotton put on board at Wilmington; they were both taken an board the vessel. There may have been one set left with Harris & Powell, but I am uncertain. None of them were false or colorable to my knowledge or belief. I signed them.

18. To the 18th interrogatory he says: I have not in my possession any bills of lading, or papers, or writings of any kind showing my interest or the interest of any person whomsoever in the vessel or her lading. No such papers were on board that I am aware of at the time of capture.

19. To the 19th interrogatory he says: I know nothing of any charter-party for the voyage. I have already answered the remainder of this interrogatory as fully as I am able.

20. To the 20th interrogatory he says: When we left Wilmington we had on board our custom-house clearance, ship's articles, register, manifest, bill of health, and port clearance, bills of lading, and nothing else that I remember. I think all of these papers were burnt in the vessel's furnace. They were destroyed any way, but I do not know when, by whom, nor who was then present.

21. To the 21st interrogatory he says: I have known that Wilmington was at war with the United States and blockaded by U. S. vessels for the past six months. I knew this when I went into that port, for I had six guns fired at me by the blockaders, and I knew it when I came out. I knew it also at the time of my capture.

23 22. To the 22d interrogatory he says: Wilmington was under an order of blockade by the U. S. government at the time the "Douro" entered and left the same. No notice of any such blackade had been endorsed upon any of the vessel's papers.

23. To the 23d interrogatory he says: The register of the "Douro" was shown to and examined by one of the officers of the U. S. gunboat "Tuscarora" just after we had left Madeira, on our last voyage. This was about the 16th or 17th of December. He endorsed nothing upon the register and allowed the "Douro" to proceed.

24. To the 24th interrogatory he says: I have already answered this interrogatory as fully as I am able.

25. To the 25th interrogatory he says: The vessel enquired about has never before been seized or condemned as prize.

26. To the 26th interrogatory he says: I have lost nothing by the capture of the vessel and cargo, unless I lose my venture of tobacco already mentioned. I was to receive a bounty of fifty pounds sterling from Mr. Fallanstine if I succeeded in safely running the blockade of Wilmington.

27. To the 27th interrogatory he says: I cannot answer this interrogatory.

28. To the 28th interrogatory he says: If we had arrived at Nassau, our destined port, I should have turned the cargo over to Saunders & Son, the consignees.

24 29. To the 29th interrogatory he says: I cannot answer this interrogatory.

30. To the 30th interrogatory he says: The cotton was placed on board directly from the wharf, in Wilmington, N. C. The cargo we took in at Nassau was laden partly from the shore, and the remainder was transferred from the "Chatain,' an English vessel, lying at Salt Key, in the harbor of Nassau.

31. To the 31st interrogatory he says: I cannot answer this interrogatory.

32. To the 32d interrogatory he says: No papers were carried away from the vessel at any time to my knowledge or belief.

33. To the 33d interrogatory he says: Bulk was not broken until the capture, when the crew of the capturing vessel looked all through the cargo to find contraband goods.

34. To the 34th interrogatory he says: Mr. Esser, a Prussian I think, came on board the Duoro, at Liverpool, and acted as supercargo out to Nassau. He went into Wilmington as a passenger, and was on board as such at the time of capture. He is a merchant in Manchester, England. He was destined to Nassau. At Nassau we took on board Mr. Knowles, a Bahama pilot, who went into Wilmington and came out again, and was on board at the time of capture. He piloted us out of Nassau, and we did not stop to leave him but carried him on. We also took on board at Nassau a Wilmington pilot, whose first name was Dennis. I do not know his last name.

25 I presume he is a Confederate citizen. We left him at Wilmington, and came out without any pilot. At Wilmington we took on board two passengers, bound for Nassau, named Mr. James and Mr. Davis. They were Confederate citizens. I do not know their profession or occupation. None of these passengers, as far as I am aware, had any property, concern, or authority in regard to the vessel or cargo. No one was secreted or confined on board. Besides those I have just mentioned we had on board, as passengers, bound for Nassau, two men, sailors, who had been shipwrecked on the English vessel "Wave Queen," when going into Wilmington.

35. To the 35th interrogatory he says: All the papers on board were en-

tirely true and fair to the best of my belief. No person on board had any passport, license, or letters of safe conduct. I have signed no papers relating to the vessel or cargo but the bills of lading and shipping articles.

36. To the 36th interrogatory he says: At the time of the "Duoro's" first being pursued she was steering toward Nassau, being about ten hours out from Wilmington. We first saw the "Quaker City" at about six o'clock in the morning, and as soon as we saw her we changed our course, and put about towards east-southeast. She immediately made chase, and kept gaining on us until about half past eleven o'clock; she fired a broadside at us for us to heave to. I stopped the "Douro," and they came on board and
26 ordered me to go to the "Quaker City." They then took possession of the "Douro," and she was brought to this port. Her course at all times, when the weather would permit, was destined towards the port to which she was destined by the ship's papers, except when going into Wilmington. When she left Nassau she was bound by the papers for St. John's, New Brunswick, but she entered Wilmington and sailed wide of her course for St. John's.

37. To the 37th interrogatory he says: I cannot answer this interrogatory.

38. To the 38th interrogatory he says: None of the articles herein enumerated were on board at the time of capture or at any time during the voyage that I am aware of. No goods were thrown overboard to the best of my knowledge and belief.

39. To the 39th interrogatory he says: I have already answered all that I know or believe to the best of my knowledge and belief in regard to the real and true property and destination of the vessel and cargo.

40. To the 40th interrogatory he says: The "Douro" has never sailed under any convoy to my knowledge.

41. To the 41st interrogatory he says: I have already answered this interrogatory.

42. To the 42d interrogatory he says: The "Douro" never sailed with any commission to make prizes.

43. To the 43d interrogatory he says: The Douro never sailed or acted in company or concert with any vessel engaged in making prizes.

K. C. McKENZIE.

27 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Edward H. Owen, one of the prize commissioners appointed by the district court of the United States for the southern district of New York, in and for the said district, do hereby certify that the foregoing deposition of Kenneth Child McKenzie, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the city of New York, this 16th day of March, in the year of our Lord one thousand eight hundred and sixty-three.

EDWARD H. OWEN, *U. S. Prize Com'r.*

28 District court of the United States for the southern district of New York.

Deposition of John J. Bloore, 2nd mate, a witness produced, sworn, and examined in preparatorio, on the sixteenth day of March, in the year eighteen hundred and sixty-three, at the office of E. H. Owen, U. S. prize com'r, No. 72 Wall st., New York, on the standing interrogatories established by the district court of the United States for the southern district of New York, the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq., U. S. district attorney, in behalf of the captors of a certain ship or vessel called the Douro and her cargo.

1. To the 1st interrogatory he says: I was born in England, and now live there; I am not married; I am not a citizen of the United States; I owe allegiance to the queen of England.

2. To the 2d interrogatory he says: I was present at the capture of the above-named vessel and cargo.

3. To the 3d interrogatory he says: The capture was made on the 9th of March instant, at about twelve o'clock m. I can't tell the latitude or longitude. It was, I believe, somewhere off Cape Fear. The vessel cap-
29 tured had no commission or letters authorizing her to make prizes. I did not hear why the capture was made.

4. To the 4th interrogatory he says: The vessel sailed under English colors. She had no other colors on board that I am aware of.

5. To the 5th interrogatory he says: No resistance was made. There were, I believe, some fifty-five guns fired by the capturing vessel while she was in chase of the prize. The vessel captured was a merchantman. She was owned in England, but I don't know by whom. The capturing vessel was the United States steamer "Quaker City."

6. To the 6th interrogatory he says: The "Quaker City" was a United States vessel-of-war. I do not know what particular authority she had for making the capture. The vessel had never before been seized to my knowledge.

7. To the 7th interrogatory he says: The vessel taken was the "Douro," and her master's name Kenneth Child McKenzie. I don't know who appointed him to the command, nor when he was appointed. I have known the vessel since I shipped on board, which was the 24th November, 1862. I have known the captain for upwards of twelve months past. I don't
30 know where he took charge of the vessel; I suppose it was in Liverpool. The master in an Englishman and lives in England. He is a British subject.

8. To the 8th interrogatory he says: The vessel is 183 tons register; she is a screw, and her engine, I think, is 70 horse power. The ship's complement is 24, officers and crew all told; I am not sure that there was that number on board at the time of capture; they were all Englishmen, I believe; they, that is the seamen, were shipped in Nassau about the 15th February last; I can't say who hired them.

9. To the 9th interrogatory he says: I belonged to the company; I was 2d mate; I had no interest in the vessel or cargo, nor had any of the officers or crew any interest therein that I am aware of.

10. To the 10th interrogatory he says: The vessel carried no guns except a signa' gun; she is an English built vessel, and has always been called the Douro as far as I know.

11. To the 11th interrogatory he says: That the vessel was bound from Wilmington, North Carolina, to Nassau on the voyage upon which she was captured. The voyage began at Nassau and I suppose was to have ended at Nassau. The vessel had no cargo except cotton; she had about

31 420 bales of cotton on board when she left Wilmington and at the time of capture; it was taken aboard at Wilmington the latter part of February and the beginning of March instant.

12. To the 12th interrogatery he says: I don't know what papers she had. Her last voyage was from Nassau to Wilmington; she had a general cargo at that time; I am not aware that she had any arms or munitions of war.

13. To the 13th interrogatory he says: I have already stated that the vessel had cotton on board and the time when and the place where it was taken aboard.

14. To the fourteenth interrogatory he says: I don't know who owned the vessel or the cargo on board at the time of capture.

15. To the 15th interrogatory he says: I have no knowledge or information of any bill of sale or of any agreement to purchase the vessel.

16. To the 16th interrogatory he says: I don't know who shipped the cargo, nor to whom it was consigned. I can't answer this question further than I have already.

17. To the 17th interrogatory he says: I don't know how many bills of lading were signed, or whether any were signed; I know nothing about the bills of lading.

32 18. To the 18th interrogatory he says: I don't know what papers were aboard the vessel; I have none in any way relating to the vessel or cargo.

19. To the 19th interrogatory he says: I don't know the degree of latitude or longitude of the place of capture; it was, as I have before stated, off the coast of North Carolina. I don't know of any charter-party.

20. To the 20th interrogatory he says: I don't know what papers were on board relating to the vessel or cargo at the time she left Wilmington, nor do I know or believe that any of such papers were in any way destroyed or concealed, or attempted to be.

21. To the 21st interrogatory he says: We all knew that Wilmington was under blockade when we entered the port and when we sailed therefrom on the last voyage.

22. To the 22d interrogatory he says: That port was in fact under blockade; we saw one of the blockading vessels as we came out; I don't know that any notice or warning had been endorsed on the register.

23. To the 23d interregatory he says: I believe the register was shown to a United States officer just after she left Madeira on her way out to Nassau; I don't know what entry, if any, was made.

24. To the 24th interrogatory he says: I know that the vessel entered Wilmington while under blockade, and came out as I have already stated.

33 25. To the 25th interrogatory he says: The vessel has never before been seized or condemned to my knowledge.

26. To the 26th interrogatory he says: I have not sustained any loss unless I lose my wages; our agreement was that if the vessel should be captured we should not lose our wages.

27. To the 27th interrogatory he says: I don't know of any insurance.

28. To the 28th interrogatory he says: I don't know to whom the cargo would have belonged if the vessel had reached her destined port; I can't answer this farther.

29. To the 29th interrogatory he says: I think the cotton was raised in North Carolina.

30. To the 30th interrogatory he says: I have already answered this question; the cotton was taken from the docks.

31. To the 31st interrogatory he says: I cannot answer this question; I do not know of any such papers.

32. To the 32d interrogatory he says: I am not aware that any papers were delivered out or carried away from the vessel by any body.

33. To the 33d interrogatory he says: Bulk has not been broken.

34. To the 34th interrogatory he says: There were four passengers in the saloon and two forward among the men; none were secreted; they were all taken with the vessel; they were going with the vessel to Nassau; I
34 don't know where they lived; I can't answer farther.

35. To the 35th interrogatory he says: I have already stated that I do not know anything about any of the papers which were on board; I cannot answer this interrogatory farther.

36. To the 36th interrogatory he says: The vessel left Wilmington on Sunday night, and the next day, when she was captured, she was steering for Nassau.

37. To the 37th interrogatory he says: I have no knowledge or information of any sale or transfer of the vessel or of any of the matters herein enquired of.

38. To the 38th interrogatory he says: The vessel had no guns but the signal gun before mentioned; she had nothing of cargo aboard except the cotton, which was her only cargo.

39. To the 39th interrogatory he says: I have stated all I know or believe concerning the property and destination of the vessel and cargo.

40. To the 40th interrogatory he says: The vessel never sailed under convoy.

41. To the 41st interrogatory he says: I have already stated that the vessel did enter the port of Wilmington while under blockade and did attempt to sail therefrom, and had succeeded in passing the vessels there stationed on blockade when she was captured by the U. S. Quaker City.

35 42. To the 42d interrogatory he says: The vessel had no commission to make prizes.

43. To the 43 interrogatory he says: The vessel never sailed or acted in company with any vessel having such commission as is enquired of.

JOHN F. BLOORE.

36 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Edward H. Owen, one of the prize commissioners appointed by the district court of the United States, for the southern district of New York, in and for the said district, do hereby certify that the foregoing deposition of John T. Bloore, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and affixed my official seal at the city of New York, this 16th day of March, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.] EDWARD H. OWEN, *U. S. Prize Com'r.*

37 District court of the United States for the southern district of New York.

Deposition of George A. Esser, supercargo or passenger, a witness produced, sworn, and examined in preparatorio, on the 16th day of March, in the year eighteen hundred and sixty-three, at the office of the U. S. prize commissioners, 39 Chambers st., on the standing interrogatories established by the district court of the United States for the southern district of New York, the said witness having been produced for the purpose of such examination by E. Delafield Smith, esq., U. S. district attorney, in behalf of the captors of a certain ship or vessel called the "Douro."

1. To the first interrogatory he says: I was born in Prussia; I now live in Manchester, England; I have lived there three years and a half; previously in Liverpool. I have lived in England about 7 or 8 years. I am a subject of the king of Prussia, and I owe allegiance to his government. I am not married.

2. To the 2d interrogatory he says: I was present at the capture of the "Douro"

38 3. To the 3d interrogatory he says: The capture was made on the morning of the 9th of March instant, some 160 to 170 miles off the harbor of Wilmington, N. C., as nearly as I can judge. We were brought with the vessel to New York. Our vessel had no commission authorizing her to make prizes. We were captured because we were off Wilmington, having a cargo of cotton on board, and having no manifest, nor clearance, and no invoice.

4. To the 4th interrogatory he says: We sailed under English colors. I do not know that we had any other national flags. We had signal colors. I do not know that I ever saw any other colors on board the ship.

5. To the 5th interrogatory he says: There was resistance made so far as this: we tried to escape; we put on all the steam we could raise, and went as fast as we possibly could. The capturing vessel fired many times during a long chase, of about (5) five hours; I should think she fired at us something like 50 guns. We were captured by the "Quaker City," a United States gunboat, commanded by Capt. Fraley. There was no ship-of-war in sight, to my knowledge. After the capture, and after I was on board the Quaker City, a vessel passed in sight, which I was told was the "Ericcson."

39 She did not aid in the capture; the capture had been made a half an hour before I saw the "Ericcson." Our vessel is a merchantman. Mr. Fallenstein, of Liverpool, appears on the register as the owner. He may own a large share of her, and he may own nothing at all in her; I do not know. He gave me a power of attorney over the vessel to manage her. I do not know where that paper is now; I have not got it in my possession. I do not know the force of the "Quaker City."

6. To the 6th interrogatory he says: I suppose the Quaker City had a commission authorizing her to make captures. She is a United States gunboat.

7. To the 7th interrogatory he says: The name of the captured vessel is the "Duoro." The captain's name is Mackenzie. He was appointed to the command by Mr. Fallenstein, at Liverpool. I have known the vessel since the middle of November last. I have known the captain since the latter part of the same month. The captain's residence is Liscard, near Liverpool, England. His wife lives there. I do not know how long he has lived there. I do not know where he was born. I suppose he is an Englishman, and a subject of Great Britain.

40 8. To the 8th interrogatory he says: The registered tonnage of the "Duoro" is 185 tons English. She carried a company of about

20 men, including officers; all on board when taken. I think they were all English. Part came on board at Liverpool, and part at Nassau. I believe the captain hired them.

9. To the 9th interrogatory he says: I belonged to the vessel, and was supercargo until I arrived at Nassau. I went with the trip, and had power over the vessel the entire trip; but after we left Nassau I did not take any control of the vessel. I had no interest in the vessel or cargo, nor had any of her officers or crew.

10. To the 10th interrogatory he says: I have known the vessel since last November. I saw her then at Liverpool. She carried no guns. There was a company of about 20 persons on board, beside myself, and three passengers. She was English build, her name "Duoro." I do not know that she was ever called by any other name.

11. To the 11th interrogatory he says: When taken we were bound to Nassau, N. P. The voyage began at Liverpool, and would have ended either at Nassau or Liverpool, depending upon circumstances. She carried from Liverpool to Nassau coal, and some merchandise, dry-goods or woolen
41 goods; and from Nassau to Wilmington she carried an assorted cargo, dry-goods, teas, fruits, boots, drugs, &c., &c., and when taken her cargo was cotton. This cotton was put on board in Wilmington, N. C., previous to the 8th of this month of March. I do not know that she ever carried any cargo contraband of war.

12. To the 12th interrogatory he says: I do not know that she had any passport or sea-brief. After we left Liverpool we touched at Madeira. We went to Nassau, thence to Wilmington, N. C. Her voyage began at Liverpool, and would have ended there, or at Nassau. I can give no further particulars of her cargoes beyond what I have already done. We cleared from Nassau, the last clearing port, I think, on the 16th of February last. We left Wilmington on the 8th of March instant.

13. To the 13th interrogatory he says: I have already described her lading so far as I can. Her cargo with which she left Wilmington was about 422 bales of cotton, which was on board when taken, and which was put on board the early part of this month of March.

14. To the 14th interrogatory he says: I have already answered all that I know relative to the vessel and cargo. "Mr. Fallenstien," of Liverpool, appears officially as the owner of the vessel. I knew that "Schank Souchay & Co.," of London, represent the actual owners, or are the actual
42 owners of the cargo and vessel. The captain does not know this. He considers Fallenstein the owner. I knew about this, because I was so informed by them, and was required by them to keep this fact private; and for this reason I was unwilling to disclose it on this examination. They are English merchants, residing in London. I think some of the partners are English by birth, and some are German. I don't exactly know about this. I don't know anything about their families. I don't know of what state they are citizens or subjects.

15. To the 15th interrogatory he says: I don't know that any bill of sale was given of the vessel. I don't know any particulars about the sale of the vessel at any time.

16. To the 16th interrogatory he says: The cargo was put on board at Wilmington, N. C., as already stated. The cotton came to Wilmington from Charleston. A gentleman from Charleston came up with the cotton. His name is "Pasch," a German. He put the cargo on board. The captain and I employed him to get the cargo. The consignees of the cargo at Wilmington were Harris & Howell. The cargo was bought by Mr. Pasch, or his house in Charleston, for the captain and me. It is to be paid for out of the proceeds of our inward cargo, which had not been sold when we left. The

laders or consignees have no interest in the cargo except as commission merchants. I think the cargo, if restored, will belong to Schank Souchay & Co., of London.

43 17. To the 17th interrogatory he says: I don't know how many bills of lading were signed, nor that any were signed for the cargo of cotton.

18. To the 18th interrogatory he says: I know nothing about any papers such as are enquired about.

19. To the 19th interrogatory he says: I don't know the latitude or long itude of the capture. I don't think there was any charter-party for the voyage.

20. To the 20th interrogatory he says: I don't know anything about the papers enquired about. Some papers were burned by my orders while we were under chase by the Quaker City. They were letters and private accounts, which I did not want to have fall into the hands of the captors, or any other person.

21. To the 21st interrogatory he says: I did know all about the war, and all about the blockade, and so did the captain and owners—I suppose they knew. All this was well known before we left England.

22. To the 22d interrogatory he says: I suppose, or I believe, such port was under an order of blockade by the government of the United States. No warning was received of such blockade, and no endorsement of the vessel's papers.

23. To the 23d interrogatory he says: We were overhauled by the U. S. ship Tuscarora, near Maderia, and the register was examined then by

44 an officer who came on board. He did not endorse the papers.

24. To the 24th interrogatory he says: We did enter and did depart from Wilmington knowing of the blockade.

25. To the 25th interrogatory he says: She has never been seized as a prize before to my knowledge.

26. To the 26th interrogatory he says: I have not sustained any loss by the seizure. I have not made the profit which I might have made.

27. To the 27th interrogatory he says: I don't know anything about any insurance.

28. To the 28th interrogatory he says: I have already explained all I know about the cargo.

29. To the 29th interrogatory he says: The cargo was the produce of the Southern States.

30. To the 30th interrogatory he says: The cargo was put on board direct from the railroad.

31. To the 31st interrogatory he says: I don't know anything about any papers except as already stated.

32. To the 32d interrogatory he says: No papers were delivered out of the vessel, except what I have already explained, or except what were given to the captors.

33. To the 33d interrogatory he says: Bulk had not been broken when captured.

45 34. To the 34th interrogatory he says: There were three passengers on board besides myself, one by the name of Davis, and one by the name of James. They came from Wilmington. I think they were Americans. I don't know their first names, nor their rank, profession, or occupation. One came on board at Nassau. His name is Knowles. I don't know his first name. I think he is an Englishman. I think he used to be a captain of a schooner. I don't know his rank, occupation, or profession. None were secreted. I don't know where they were going, nor their business, except they were going to Nassau. They were likewise two shipwrecked men

of the Wave of the Queen, a vessel which was wrecked between Charleston and Wilmington. I suppose they were sailors; they were going to Nassau. I don't know anything more about them. I don't know what countrymen they are. They assisted, I suppose, in sailing the vessel; I cannot be positive.

35. To the 35th interrogatory he says: I have already told all I know about the papers, and all papers, and about the vessel and cargo. I really cannot say anything more.

36. To the 36th interrogatory he says: We were steering for Nassau, and tried our best to escape capture.

46 37. To the 37th interrogatory he says: I don't know anything about any sale of the vessel at any time.

38. To the 38th interrogatory he says: There were no mounted guns on board, and no cargo of any kind, except as already described.

39. To the 39th interrogatory he says: I have already told all I know about the vessel and cargo.

40. To the 40th interrogatory he says: She never sailed under convoy so far as I know.

41. To the 41st interrogatory he says: So far as I know she never attempted to enter or sail from any port under blockade except as already detailed.

42. To the 42d interrogatory he says: She never carried any license as privateer or letter of marque to my knowledge.

43. To the 43d interrogatory he says: She never to my knowledge sailed or acted in company or concert with any armed vessel or vessels.

G. A. ESSER.

Subscribed and sworn to this 16th day of March, 1863.

HENRY H. ELLIOTT, *U. S. Prize Com'r.*

47 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Henry H. Elliott, one of the prize commissioners appointed by the district court of the United States for the southern district of New York, in and for the said district, do hereby certify that the foregoing deposition of Geo. A. Esser, supercargo, a witness produced on behalf of the captors, was taken by and under my direction, at the time and place mentioned in the caption thereof; that the same contains the answers of the said witness to the "standing interrogatories;" that before such examination was commenced the oath directed by the 17th prize rule was by me duly administered to the witness, and he was thereupon afterwards examined separate and apart from the other witnesses; that such examination was begun, continued, and finished on the same day, and was by me, or under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at the city of New York, this 16th day of March, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.] HENRY H. ELLIOTT, *U. S. Prize Com'r.*

49 District court of the United States for the southern district of New York.

In the matter of the steamer Duoro and her cargo, taken as a prize.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Theodore De Luce, being duly sworn, deposes and says that he is acting

ensign U. S. navy, attached to the U. S. steamer "Quaker City;" that he arrived in this port on the evening of the 12th instant, in charge as prize master of the above-named prize Duoro; that the said prize was captured by the above-named steamer, "Quaker City," captain James M. Fraley in command; that the capture was made in lat. 33° 41″ north, long. 77° 2′ west, off Cape Fear, North Carolina, on the morning of the 9th instant, after a chase of four hours; that after the capture deponent was placed in charge as prize master by Captain Fraley, with orders to proceed to this port; that the papers found on board the said prize are now delivered to the prize commissioners, and are as follows:

One custom-house certificate, marked A*; one clearance Liverpool, B*; one bill of health, C*; three parchment certificates, D, E, F*; one victualling bill, G*; one bill of health, H*; one Portuguese letter, I*; one Portuguese
50 clearance, K*; one certificate of registry, L*; one shipping articles, M; one shipping articles, N*; one regulations of Board of Trade, O*; 36 miscellaneous papers marked No. 1 to 36 inclusive†; two Liverpool newspapers, No. 37 and 38*; one printed "Mercantile Marine Service Association," No. 39*; one disbursement book, No. 40; log-book, No. 41‡.

That deponent has delivered to the prize commissioners each and every document paper and writing received by him relating to the aforesaid captured property, in the same state and condition in which he received them, without any "fraud, subduction, or embezzlement," and without any additions or alterations whatever; and he does not know nor does he believe that any of the documents, papers, and writings so received, are missing or wanting.

The deponent further says that if at any time hereafter, and before the final condemnation or acquittal of the said captured property, any further or other papers relating thereto shall be found or discovered to his knowledge, they shall be delivered up or information thereof given to the prize commissioners of this district, or to this court.

THEO. F. DE LUCE,
Acting Ensign, U. S. N.

Subscribed and sworn to this 13th day of March, 1863.
HENRY H. ELLIOTT, *U. S. Prize Com'r.*

B, H. H. E.

51 *Foreign-going ship—Certificate for clearance outwards.*

Name of master, K. C. McKenzie; name of ship, Douro; official number, 1153; port belonging to, L'pool; regist'd tonnage, 185; port of departure, Liverpool; destination of voyage, Nassau; pay'ts, £ , *s*, *p*; fees, 0 15*s*. 0; forms, ; log, . Total, .

I certify that the above-named master has engaged his crew before me, and has produced the certificates of himself and of such of his mates as are required to produce certificates, and has made the above-mentioned payments, or has complied with the provisions of the statutes in that behalf.

Dated at Liverpool, 26th day of Nov'r, 1862.

N. C. MOTT, *Shipping Master.*

53 Number of certificates, none; ship Douro, des'd for Nassau; master, Kenneth Child McKensie; certificate of clearance, 1st Dec'r, 1862.

R. M. GREEN, *Searcher.*
M. G. M., *Collector.*

Cocket card.

---

* Omitted; irrelevant.

† Omitted, except 28 and 32; small bills and expenses of no materiality.

‡ Omitted, not being produced in evidence on trial.

L, H. H. E.

Certificate of British registry.

No. 1153 One thousand one hundred and fifty-three.

CUSTOM-HOUSE, *L'pool*, 12 *Mar.*, '62.

I hereby certify that Thos. Barron, the No. of whose certificate of competency is 14,644, has this day been appointed master in the place of John Read.

H. C. JOHNSTON, *Reg.*

This is to certify that John Bibby, Charles Cotesworth, and George Louthean, all of Liverpool, in the county of Lancaster, merchants, having made and subscribed to the declaration required by law, and having declared that they, together with James Jenkinson Bibby, Robert Wynne, and Joseph Leyne, all of Liverpool aforesaid, merchants, are sole owners in the proportions specified on the back hereof, of the ship or vessel called the Douro, of Liverpool, which is of the burthen of one hundred and eighty-five 28-100 tons, and whereof William Wales Benson is master, and that the ship or vessel was built at Paisley, in the county of Renfew, in the present year 1853, as appears by a certificate under the hand of Blackwood & Gordon, dated 18 August, 1863, and H. Cleland, tide surveyor at the port of Glasgow, having certified to us that the said ship or vessel has one
55 deck and three masts, that her length from the inner part of the main stem to the forepart of the stern post aloft is one hundred and fifty-five feet seven tenths; her breadth in midships is twenty-two feet two tenths; her depth in hole, at midships, is twelve feet four tenths; that she is schooner-rigged, with a standing bowsprit; is square sterned, clench built, has no galleries, and demi-women's head; that the framework and plating is iron, and that she is a steamer, propelled by screw propellor, with an engine-room thirty feet two tenths in length, and, including shaft space, ninety-two 84-100 tons; and the said subscribing owners having consented and agreed to the above description, and having caused sufficient security to be given as required by law, the said ship or vessel called the Douro has been duly registered at the port of Liverpool, certified under our hands at the custom house in the said port of Liverpool, this 10th day of September, in the year
56 one thousand eight hundred and sixty-three.

C. RENNARD, *Collector.*
AMB. FOOTE, *Comptroller.*

Names of the several owners within mentioned.

John Bibby	Twelve	12
George Louthean	Sixteen	16
James Jenkinson Bibby	Twelve	12
Charles Cotesworth, Robert Wynne, and Joseph Leyne, co-partners, trading together under the firm of Cotesworth, Wynne & Leyne	Twenty-four	24
		64

C. RENNARD, *Cm.*
AMB. FOOTE.

Names of the several persons owners of the ship within described, on the 22d day of May, 1855.	No. of shares held by each owner.	
John Bibby	Twelve	12
George Louthean	Twelve	12
James Jenkinson Bibby	Twelve	12
Charles Cotesworth, Robert Wynne, and Joseph Leyne, joint owners	Twenty-four	24
John Taylor Cross	Four	4
		64

57

Names of the several persons, ownere of the vessel within described, on the 26 July, 1858.	No. of shares held by each owner.	
John Bibby, James Jenkinson Bibby, joint owners	Forty-eight	48
John Taylor Cross	Three	3
George Louthean	Thirteen	13
		64

All of Liverpool, in the county of Lancaster, merchants.

I hereby certify that the several persons above mentioned are on this 26th day of July, 1858, registered owners of the vessel within described in the respective number of shares set opposite their respective names.

JAMES C. DOWNEY, *Registrar.*

CUSTOM-HOUSE, *Liverpool*, 19 *Dec.*, 1861.

I hereby certify that John Reed, the No. of whose certificate of competency is 12768, has this day been appointed master in the place of Thomas Barron.

58 JAMES DOWNEY, *Reg.*

CUSTOM-HOUSE, *Liverpool, dated* 5 *Nov.*, 1853.

Robert Bence has now become master.

JNO. MOSER, JR., *Collector.*
C. DERHAM, *Comptroller.*

CUSTOM-HOUSE, *Liverpool*, 26 *Sept.*, 1854.

Henry William Lloyd has now become master.

WM. HEWETT, JR., *Col.*
A. C. DOWNEY, *Comp't.*

CUSTOM-HOUSE, *Liverpool*, 23 *July*, 1855.

I hereby certify that William London, the number of whose certificate of competency is 12786, has this day been appointed master of the ship within described in the place of Henry William Lloyd.

WM. HEWETT, *Registrar.*

CUSTOM-HOUSE, *Liverpool*, 3 *Mar.*, '57.

I hereby certify that William Bain, the number of whose certificate is

3546, has this day been appointed master of the ship within described, in the place of William London.

59 JAS. B. KEY, *Reg.*

CUSTOM-HOUSE, *Liverpool, 9th Feb.*, 1858.

I hereby certify that William London, the number of whose certificate of competency is 12786, has this day been appointed master of the vessel within described, in the place of William Bain.

CHAS. B. MESSERANY, *Reg.*

CUSTOM-HOUSE, *Liverpool, 28th April*, 1858.

I hereby certify that John Milburn, the number of whose certificate of service is 43571, has this day been appointed master of the vessel within described in the place of William London.

CHAS. B. MESSERANY, *Reg.*

CUSTOM-HOUSE, *Liverpool*, 29 *Ap'l*, '58.

I hereby certify that William London, the number of whose certificate of competency is 12786 has this day been appointed master of the vessel within described, in the place of John Milburn.

60 JAMES C. DOWNEY, *Reg.*

CUSTOM-HOUSE, *L'pool, July*, 1858,

I hereby certify that William Pearze Wornell, the number of whose certificate of competency is 4746, has this day been appointed master.

JOS. PYKE, *Register.*

Names of the several persons, owners of the vessel within described on the 1st July, 1859.	No. of shares held by each one.	
John Bibby, James Jenkins Bibby, joint owners.....	Sixty-one	61
John Taylor Cross.....	Three	3
All of Liverpool, Co. of Lancaster, merchants.		64

CUSTOM-HOUSE, *Liverpool.*

I hereby certify that the above-mentioned persons are, on this first day of July, 1859, registered owners of the respective number of shares in the vessel within described set opposite their respective names.

JOS. PYKE, *Reg'r.*

61 CUSTOM-HOUSE, *L'pool*, 3 *Aug'st*, 1859.

I hereby certify that William Anderson, the number of whose certificate of competency is 12743, has this day been appointed master of the vessel within described in the place of William Pearse Worrell.

JAMES C. DOWNEY, *Register.*

CUSTOM-HOUSE, *L'pool*, 21 *Dec.*, 1859.

I hereby certify that Herbert Bonfellow, the number of whose certificate of competency is 6221, has this day been appointed master in the place of William Anderson.

JOS. PYKE, *Reg'r.*

CUSTOM-HOUSE, *L'pool*, 1 *Feb'y*, 1860.

I hereby certify that Thomas Bunon, the number of whose certificate of

competency is 14644, has this day been appointed master in the
62 place of Herbert Bonfellow.

J. C. CORNELIUS, *Coll.*

CUSTOM-HOUSE, *Liverpool*, 5 *July*, 1860.

I hereby certify that John Grooms, the No. of whose certificate of competency is 1359, has this day been appointed master in the place of Thomas Barron.

JAMES C. DOWNEY, *P. P.*

CUSTOM HOUSE, *L'pool*, 5 *June*, 1862.

I hereby certify that William Baiz, the number of whose certificate of competency is 3546 has this day been appointed master in the place of Thomas Barron.

J. C. JOHNSTON, *Coll.*

CUSTOM-HOUSE, *Liverpool* 21 *Nov.*, 1862.

I hereby certify that Kenneth Child McKenzie, whose certificate is numbered 26875, has this day been appointed master.

GEO. THOMAS, *Reg'r.*

63 CUSTOM-HOUSE, *Liverpool*, 24 *Nov.*, 1862.

I hereby certify that Otto Theodore Tallenstein is, on this 24 day of Nov'r, 1862, the sole registered owner of the vessel within described, of Liverpool, in the Co. of Lancaster, merchant.

GEO. THOMAS, *Reg'r.*

CUSTOM-HOUSE, *Liverpool*, 26 *Sept.*, 1860.

I hereby certify that Richard Infall Power, the number of whose certificate of competency is 20673, has this day been appointed in the place of John Grooms.

S. C. JOHNSTON, *Reg'r.*

CUSTOM-HOUSE, *Liverpool*, 24 *Oct.*, 1860.

I hereby certify that William London, the No. of whose certificate of competency is 12786, has this day been appointed master in the place of R. S. Power.

I. SONLSHMST, *Reg.*

64 CUSTOM-HOUSE, *L'pool*, 5 *June*, '61.

I hereby certify that John William Biggs, the No. of whose certificate of competency is 5035, has this day been appointed master in the place of William London.

J. C. JOHNSTON, *Reg'r.*

CUSTOM-HOUSE, *L'pool*, 7 *August*, '61.

I hereby certify that William London, the No. of whose certificate is C 12786, has this day been appointed master in place of Jno. W. Biggs.

JAS. C. DOWNEY, *Reg.*

CUSTOM-HOUSE, *L'pool*, 18 *Sept.*, '61.

This is to certify that Thomas Bunon, the No. of whose certificate of competency is 14644, has this day been appointed master in the place of William London.

J. CONETLMISTFF.

1469

No. 28.

65 I hereby agree to run the blockade on the S. S. Douro from Nassau to any Confederate port, receiving for this a bounty of £20 in and £20 for coming out to Nassau; bounty payable after the trips, either at Nassau or Liverpool.

(Signed) AUSTIN HARLEY.

Witnesses:
(Sig'd) R. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.

I agree to run the blockade, as mentioned above, at a bounty of £12 in and twelve pounds out from and back to Nassau, payable as above.

(Sig'd) JOHN T. BLOORE.

Witnesses:
(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) AUSTIN HARLEY, *Chief Officer.*
(Sig'd) G. A. ESSER.

I agree to run the blockade, as mentioned above, at a bounty of £10 for running in, and another £10 for running out, and back to Nassau; bounty payable after the trips have been accomplished, either at Nassau or Liverpool.

(Sig'd) SAMUEL COOK.

Witnesses:
(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

I agree to run the blockade, as above, at a bounty of £6 in and £6 after returning to Nassau; bounty payable after the trips have been accomplished, either at Nassau or Liverpool.

(Sig'd) THOMAS LOVEDAY.

Witnesses:
(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY.

66 I agree to run the blockade, as above, at a bounty of ten pounds and 10 shillings in, and an equal sum to run out to Nassau; bounty payable as follows, viz: £10 10 in advance, and £10 10 on our successful return to Nassau.

(Sig'd) ALEXANDER McGREGOR.

Witnesses:
(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

I hereby agree to run the blockade between Nassau and any Confederate port, at a bounty of ten pounds in and ten pounds for coming back to Nassau; ten pounds to be paid in advance and £10 to be paid on our successful return to Nassau.

(Sig'd) ELIAS JOSEPH WIMSTANLEY.

Witnesses:
(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

I agree to run the blockake, as above, at a bounty of £8 in, and £8 coming out, and returning to Nassau; bounty to be payable on our successful return to Nassau.

(Sig'd) GEORGE KENDRICK.

(Sig'd) K. C. McKENZIE.
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

67 We hereby agree to run the blockade between Nassau and any Confederate port, at a bounty of nine pounds for going into any Confederate port from Nassau, and nine pounds for coming back to Nassau; nine pounds to be paid in advance at Nassau, and nine pounds to be paid on our successful return to Nassau.

(Sig'd) JOHN ATKINS.
(Sig'd) ISAAC O'BRIEN.
(Sig'd) WILLIAM STANLEY.
(Sig'd) JOHN FEGAN.
(Sig'd) THOMAS PERRY.
(Sig'd) PATRICK FEGAN.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

I agree to run the blockade, as above, for £3 in and £3 out; payable as above.

(Sig'd) JOSEPH CARROLL.

(Sig'd) K. C. McKENZIE.
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

I hereby agree to run the blockade, in the S. S. Douro, from Nassau to any Confederate port, at a bounty of forty pounds for running to any Confederate port, and forty for returning to Nassau; bounty to be payable on our successful return to Nassau; pay'bl at Nassau or L'pool.

(Sig'd) THOMAS GIBB.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

68 I hereby agree to run the blockade, in the S. S. Douro, as above, at a bounty of £30 in and £30 out; payable as above.

(Sig'd) ANDREW GIBB.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) AUSTIN HARLEY, *Chief Officer.*
(Sig'd) G. A. ESSER.

I hereby agree to run the blockade, as above, at a bounty of £25 in and £25 out; payable as above.

(Sig'd) JOHN STUART.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

We hereby agree to run the blockade, as above, at a bounty of £10 in

and £10 out; £10 to be paid in advance, at Nassau; and £10 to be paid on our successful return to Nassau.

(Sig'd) EUGENE CRONIN.
(Sig'd) GEORGE MURRAY.
(Sig'd) THOMAS DUNLOP.
(Sig'd) ALEXANDER CAMERON.
(Sig'd) JOHN HAY.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

All the agreements, as on these three pages stated, were made at Nassau 11th Feb'y, '63.

(Sig'd) K. C. McKENZIE, *Master.*
(Sig'd) G. A. ESSER.
(Sig'd) AUSTIN HARLEY, *Chief Officer.*

The agreements on these pages are a correct and true copy of the original held by G. A. Esser, esq.

AUSTIN HARLEY.

69 I hereby agree to run the blockade, in the S. S. Douro, from Nassau to any Confederate port, receiving for this a bounty of £7 (seven pounds) in, and another £7 (seven pounds) for coming out, to Nassau; bounty payable after the trips, either at Nassau or Liverpool.

JOSEPH CURTIS.
ROBERT KEELING.

Witnesses: PEMBROKE SAUNDERS.
K. C. McKENZIE.

The above appears in the original, marked No. 32, along with the other agreements, of which No. 28 is a copy.

70 M, H. H. E.

Agreement and account of crew,

Name of ship, Douro; official number, 1153; port of registry, L'pool; port No. and date of register, 413, 10, 9, 53; registered tonnage, 185; managing owner's name, address, &c., Chapple, Dutton & Co., 14 Water st., L'pool; master's name, address, &c., Kenneth Child McKenzie, Rake Lane, Lezeand, Cheshire; No. of cer't, 26875; date and place of signature, &c., 24 Nov., 1862, L'pool.

The several persons whose names are hereto subscribed, and whose descriptions are contained below, and of whom 8 are engaged as sailors, hereby agree to serve on board the said ship in the several capacities against their respective names, on a voyage from Liverpool to Nassau, thence, if required, to any ports or places in the West Indies and north Atlantic Ocean, to trade a for sale, and back to a final port of discharge in the United Kingdom; the term not to exceed six months. * * * * * * * *

That the crew shall consist of 2 mates, carpenter, boatswain, 2 stewards, cook, 8 seamen, 3 engineers, and 5 firemen. No grog allowed.

In witness whereof, the said parties have subscribed their names hereto, on the days against their respective signatures mentioned.

Signed by Kenneth Child McKenzie, master, on the 24 day of November, 1862.

(Crew all British.)

71 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the eighth day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE STEAMER DUORO, HER TACKLE, &C., AND CARGO.

This cause having been heard on the libel, and proofs and testimony taken in preparatorio, and after hearing counsel for claimants and libellants, and due deliberation being had in the premises, now, on motion of E. Delafield Smith, attorney of the United States, it is ordered, adjudged, and decreed by the court that the steamer Douro, her tackle, engines, boilers, &c., and cargo, be condemned and forfeited to the United States, on the ground that the said captured property is lawful prize of war

And it is further ordered, adjudged, and decreed that the costs and disbursements herein be adjusted and paid according to law; and that the clerk of this court issue a writ of venditioni exponas, directed to the marshal of the district, returnable on the 30 day of June, 1863, against the said steamer Douro, her tackle, engines, boilers, &c., and her cargo.

72 That before the sale by the marshal, under the venditioni exponas so ordered, the said steamer Douro, her tackle, engines, boilers, &c., and cargo, be appraised by the prize commissioners and by experts to be by them named, and that such appraisement be filed with the clerk of this court.

That said writ of venditioni exponas be executed by the marshal, under the superintendence and direction of the prize commissioners. That the proceeds of such sale be forthwith deposited by the marshal as required by law, and that he make a full and complete return of the said writ into the registry of the court, specifying the amount received for each article sold, and of his deposit aforesaid. That the prize commissioners shall proceed, under the direction of the court, as soon as possible after the entry of this decree to take the requisite evidence, and report the same to the court, to the end that a final decree may be made herein, determining what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture.

SAM'L R. BETTS.

Filed June 8, 1863.

73 By the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York, to E. Del-
[SEAL.] afield Smith, esq., attorney of the United States, acting on behalf of the United States in the suit in prize of the United States of America, libellants and captors, in interest, against the steamer Duoro, her tackle, apparel, and furniture, and cargo.

Whereas O. T Fallenstein, of Liverpool, England, claimant of the steamer Duoro, her tackle, &c., and Messrs. Chapple, Dutton & Co., of Liverpool, England, merchants, and of the partners composing the said firm, claimants of all and every the cargo of the said steamship, in pursuance of section 7 of the act of Congress approved March 3d, 1863, have lately appealed to the Supreme Court of the United States, at the city of Washington, from a decree rendered by the judge of the district court of the United States for the southern district of New York, made in favor of you, the said libellants, and whereby the said steamer Duoro, her tackle, &c., and her cargo, were condemned

and forfeited as lawful prize of war, and has filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

SAM'L R. BETTS.

74 Filed 23d June, 1863.

Due service of a copy of within admitted June, 23, 1863.

E. DELAFIELD SMITH, *U. S Dist. Att'y.*

75 District of the United States of America for the southern district of New York, in prize.

THE STEAMSHIP DUORO, HER TACKLE, APPAREL, FURNITURE, &c., and her cargo, appellants, *ads.* THE UNITED STATES OF AMERICA, respondents. } Bond for costs.

Know all men by these presents that we, O. T. Fallenstein and Messrs. Chapple, Dutton & Company, of Liverpool, and Charles Edwards, of New York, are held and firmly bound unto the above-named respondents in the sum of five hundred dollars, to be paid to the said respondents, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 23d day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas the above O. T. Fallenstein, as to vessel, and Messrs. Chapple, Dutton & Company, as to cargo, have prosecuted an appeal to the Supreme Court of the United States, at Washington, pursuant to the 7th section of the act of Congress approved March 3d, 1863, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

O. T. FALLENSTEIN, [L. S]
By CHARLES EDWARDS, *his attorney.*
CHAPPLE, DUTTON & CO. [L. S.]
By CHARLES EDWARDS, *their attorney.*
CHARLES EDWARDS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 23d day of June, 1863, before me.

JOHN A. OSBORN, *U. S. Comm'r.*

75 UNITED STATES OF AMERICA,
Southern district of New York, ss:

The within-described Charles Edwards, being duly sworn, did depose and say that he is a resident householder of the city of New York, and that

he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

CHARLES EDWARDS.

Sworn to this twenty-third day of June, A. D. 1863, before me.
JOHN A. OSBORN, *U. S. Comm'r.*

The sufficiency of the surety to the within bond approved.
SAM'L R. BETTS.

N. Y., June 23d, 1863.
Filed this 23d day of June, 1863.

77 In the district court of the United States for the southern district of New York, in prize.

THE STEAMSHIP DUORO, HER TACKLE, APPAREL AND FURNITURE, &c., and her cargo,
ads.
THE UNITED STATES OF AMERICA.

O. T. Fallenstein, of Liverpool, England, claimant of the above vessel, the steamship Duoro, her tackle, apparel, furniture, &c.; and Messrs. Chapple, Dutton & Company, of Liverpool, England, merchants, and of the partners composing the said firm, claimants of all and every the cargo of the said steamship.

The above-named claimants do hereby severally and respectively appeal from the final sentence and decree of this court, rendered on the ninth day of June, in the year 1863, the present stated term of this court, whereby the said vessel, her tackle, apparel, furniture, &c., and the cargo thereof, claimed by these claimants respectively, were adjudged to be lawfully captured, and that the same are lawful prize.

And these claimants pray that the said sentence and decree, with the proceedings in the premises, be certified and sent to the Supreme Court of the United States of America, next to be held at the city of Washington,
78 there to be heard, proceeded on, and adjudged according to law, and the course of the said court.

And these claimants do bring into this court security, according to law, for the due prosecution of the said appeal.

Dated June 23, 1863.

CHARLES EDWARDS,
Proctor for all and every the above appellants.

To GEO. F. BETTS, Esquire, *Clerk.*
E. DELAFIELD SMITH, Esquire, *U. S. District Attorney.*

Endorsed: In prize. 17,475. U. S. district court. Steamship Duoro, &c., *ads.* the U. S. of America. Appeal to the Supreme Court of the U. S. at Washington. Chas. Edwards, proctor for cl'm'ts and appellants.

SIR: Please to take notice that the within is copy of appeal taken and filed with the clerk of the district court.

June 23, 1863.

CHARLES EDWARDS, *Proctor for appellants.*

To E. DELAFIELD SMITH, Esq., *U. S. District Attorney, &c., &c., &c.*

79 Due service of a copy of the within appeal and notice endorsed thereon is hereby admitted.

Dated June 23, 1863.

E. DELAFIELD SMITH, *U. S. Dist. Att'y.*

Filed 23d June, 1863.
Record filed December 26, 1863.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE STEAMSHIP DOURO AND CARGO, O. T. FALLENSTEIN, CLAIMANT OF VESSEL, AND CHAPPLE, DUTTON & CO., CLAIMANTS OF CARGO, APPELLANTS,
vs.
THE UNITED STATES.
} No. 122.

In Prize.

Appeal from the district court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE STEAMSHIP DOURO AND CARGO, O. T. FALLENSTEIN, CLAIMANT OF VESSEL, AND CHAPPLE, DUTTON & CO., CLAIMANTS OF CARGO, APPELLANTS,
vs.
THE UNITED STATES.
} No. 122.

In Prize.

Appeal from the district court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

This vessel was captured as prize of war by the United States gunboat Quaker City, Captain James W. Fraley, commanding, on the 9th of March, 1863, on the Atlantic ocean, off Cape Fear, on the coast of North Carolina; the place of capture being about twenty-five miles east of Frying Pan shoals, or about 160 or 170 miles from the harbor of Wilmington, N. C., whence the vessel had run out. She was brought into the port of New York and there libelled in prize by the United States attorney on the 13th of March, 1863.

On the 28th of April, 1863, Charles Edwards, esq., as attorney, filed a claim for O. T. Fallenstein, of Liverpool, England, for the vessel, and a claim for Chapple, Dutton & Co., of the same place, for the cargo. (Rec., pp. 4–6.)

These claims allege that the persons represented by Mr. Edwards are British subjects residing in Great Britain, and that they are, respectively, owners of the vessel and cargo.

They admit, in substance, that the vessel had come out of the port of Wilmington on the voyage in which she was captured, but allege that there was no efficient blockade of that port, and seem to rest their defence on the ground that having eluded the vigilance of the blockading vessels on duty off that port, and reached the open sea, she was not subject to capture by any other United States vessel. The test-oaths are made by Mr. Edwards only. The district court, on the 8th of June, 1863, condemned both vessel and cargo as lawful prize of war, from which decree the claimants, by Mr. Edwards, appealed to this court. (Rec., pp. 26–28.)

It is difficult to see why this court should be troubled with this appeal. The Douro left Wilmington, N. C., on the 8th of March, 1863, laden with a cargo of 422 bales of cotton, (Rec., p. 15, ints. 12, 13,) bound for Nassau, (Rec., p. 11, int. 11,) and was captured by the Quaker City, off Cape Fear, the next day, prosecuting the same voyage. "When first pursued," says her captain, "she was steering toward Nassau, being about ten hours out from Wilmington." (Rec., p. 10, int. 36.)

It is quite needless to refer to her previous history, her voyage from Nassau to Wilmington, in February, 1863, or other facts showing that she was captured on the return voyage of a blockade-breaking adventure; that her officers and crew agreed, in writing, at Nassau, in February, 1863, to run the blockade of a "confederate port" and return to Nassau for a stipulated consideration. (See Rec., pp. 23–25.)

There is, of course, no question of knowledge of the blockade of Wilmington, nor is there a question that at the time the Douro ran out of that port its blockade was actual and efficient. Captain McKenzie says, "I have known that Wilmington was at war with the United States and blockaded by United States vessels for the past six months. I knew this when I went into that port, (February 21, 1863,) for I had six guns fired at me by the blockaders, and I knew it when I

came out; I knew it also at the time of my capture." (Rec., p. 8, int. 21, and see int. 22.) Bloore, second mate, says, "We all knew that Wilmington was under blockade when we entered the port and when we sailed therefrom on the last voyage." (Int. 21.) "That port was in fact under blockade; we saw one of the blockading vessels as we came out." (Int. 22, Rec., p. 12.) See also Esser, (Rec., p. 16, ints. 21, 22.)

The Quaker City began to make chase of the Douro at six o'clock a. m., and captured her at half past eleven a. m., after firing from fifty to sixty guns at her. When the Douro descried the gunboat she changed her course, which was towards Nassau, and put about, towards east-southeast. During the chase, the Hatteras, another United States cruiser, and a schooner, were in sight. (Rec., pp. 7–10, ints. 5 and 36.)

No authority is needed to show that the guilt of blockade-breaking adheres to the vessel and cargo throughout the whole voyage. Like the grave-diggers' law of "*se offendendo*," the principle is "crowner's quest." At this stage in the history of prize jurisprudence we respectfully decline to elaborate the proposition, notwithstanding its denial under oath in the claim.

If it were necessary to the support of the decree of condemnation, the court might see by reference to the testimony of Esser, the supercargo, that the claims of Fallenstein, as owner of the vessel, and of Chapple, Dutton & Co., as owners of the cargo, are false. Esser swears that "Schank, Souchay & Co.," of London, are actual owners of vessel and cargo. (Rec., p. 15, int. 14.) So also the fact, common to all captured blockade-breakers, of destruction of papers at the time of capture, is found in this case. (See McKenzie's test., int. 20, and Esser's test., int. 20, Rec., pp. 8–16.) All the important ship's papers were burnt in the vessel's furnace.

We think the decree of the district court ought to be affirmed.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.